

Message Text

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P R 301230Z JUL 73

FM USMISSION IAEA VIENNA

TO SECSTATE WASHDC PRIORITY 3152

INFO AEC GERMANTOWN PRIORITY

AMEMBASSY BONN

USMISSION EC BRUSSELS

AMEMBASSY TOKYO

C O N F I D E N T I A L SECTION 1 OF 3 IAEA VIENNA 6283

EO 1165 : GDS

TAGS: PARM, IAEA, US

SUBJECT: US VOLUNTARY SAFEGUARDS AGREEMENT

REF: IAEA VIENNA 6024

SUMMARY. IN THIRD FORMAL NEGOTIATING SESSION, IAEA GAVE US ARTICLE-BY-ARTICLE CRITIQUE ON US DRAFT, PROPOSED ALTERNATIVE TEXTS OF ARTICLES 1 AND 2 THAT DRAFT, AND DISCUSSED IN GREATER DETAIL ALTERNATIVE STRUCTURE FOR ENTIRE AGREEMENT PREVIEWED LAST WEEK (PARAS FOUR AND FIVE REFTEL). AGENCY ALSO (A) CONFIRMED DESIRABILITY FACILITY ATTACHMENTS ON ALL ELIGIBLE U.S. FACILITIES, (B) ASKED THAT US STUDY FEASIBILITY OF GIVING AGENCY ADVANCE NOTIFICATION OF INTERNATIONAL TRANSFERS, (C) PROVIDED INFORMATION WE HAD REQUESTED ON EURATOM/IAEA AGREEMENT, AND (D) PROPOSED SEPTEMBER 26 FOR NEXT MEETING. END SUMMARY.

1. U.S. AND IAEA NEOGITATORS MET JULY 25 AND 27. AGENCY TEAM HEADED BY LOPEZ-MENCHERO, WHO WAS ASSISTED BY RAMES (LEGAL), RYZHOV (DEVELOPMENT), AND RUBENSTEIN (OPERATIONS) ON 25TH AND
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BY RAMES, RYZHOV AND SANDERS (OPERATIONS) ON 27TH.

2. AFTER U.S. REPEATED REQUEST WE HAD ORIGINALLY MADE IN FEBRUARY (PARA 3 IAEA VIENNA 1446) FOR INFORMATION ON INSPECTION RULES AND METHODS WHICH WERE WORKED OUT DURING NEGOTIATION OF IAEA-EURATOM SAFEGUARDS AGREEMENT, AGENCY HANDED US SEVEN-PAGE PAPER ENTITLED "SUMMARY OF TECHNICAL PRINCIPLES WHICH SERVED AS BASIS OF GOV/1560 AND GOV/1560/MOD/1" (THE EURATOM AGREEMENT). COPIES OF PAPER, WHICH IS IDENTICAL EXCEPT FOR OMISSION COVER LETTER TO THAT GIVEN JAPANESE, BEING SENT UNDER AIRGRAM TO ALL ADDRESSEES. THERE WAS NO DISCUSSION OF PAPER DURING MEETING OR OF ITS RELEVANCE (IF ANY) TO U.S. OFFER AGREEMENT. MISSION COMMENTS ON PAPER AND HOW IT MAY AFFECT US-IAEA AND JAPAN-IAEA NEGOTIATIONS WILL FOLLOW LATER.

3. AGENCY GAVE US 13-PAGE DETAILED ARTICLE-BY-ARTICLE CRITIQUE OF U.S. DRAFT SAFEGUARDS AGREEMENT. (COPIES POUCHED AMBASSADOR TAPE, BREWSTER, ANDAMMONS.) BASIC THRUST OF CRITIQUE WAS TO QUESTION DEPARTURES OF U.S. DRAFT FROM STANDARD INFCIRC/153 AGREEMENT LANGUAGE. PAPER ITSELF DID NOT PROVIDE ANY EXTENSIVE ALTERNATE TEXTS, OTHER THAN WORDS AND PHRASES HERE AND THERE. HOWEVER, AGENCY READ TO US PROPOSED REDRAFT OF ARTICLES 1 AND 2 AS FOLLOWS:

"ARTICLE 1

THE GOVERNMENT OF THE UNITED STATES UNDERTAKES TO ACCEPT SAFEGUARDS, IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, ON ALL SOURCE AND SPECIAL FISSIONABLE MATERIAL IN ALL FACILITIES AND LOCATIONS OUTSIDE FACILITIES, WITHIN THE UNITED STATES, NOR ASSOCIATED WITH ACTIVITIES HAVING DIRECT NATIONAL SECURITY SIGNIFICANCE, FOR THE EXCLUSIVE PURPOSE OF VERIFYING THAT SUCH MATERIAL IS NOT DIVERTED TO NUCLEAR WEAPONS OR OTHER NUCLEAR EXPLOSIVE DEVICES.

BEGIN BRACKETS PARAGRAPHS 1.B AND 1.: OF U.S. DRAFT WOULD BE DELETED END BRACKETS

"ARTICLE 2

THE AGENCY SHALL HAVE THE RIGHT TO APPLY SAFEGUARDS, IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, TO ALL SOURCE AND SPECIAL FISSIONABLE MATERIAL IN ALL FACILITIES AND LOCATIONS OUTSIDE
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FACILITIES, WITHIN THE UNITED STATES, NOT ASSOCIATED WITH ACTIVITIES HAVING DIRECT NATIONAL SECURITY SIGNIFICANCE, FOR THE EXCLUSIVE PURPOSE OF VERIFYING THAT SUCH MATERIAL IS NOT DIVERTED TO NUCLEAR WEAPONS OR OTHER NUCLEAR EXPLOSIVE DEVICES. BEGIN BRACKETS PHRASE IN U.S. DRAFT CONCERNING MATERIAL IN TRANSIT AND REFERENCE TO PARAGRAPH 1.C WOULD BE DELETED END BRACKETS."

4. REDRAFT BRINGS THESE TWO KEY ARTICLES MUCH CLOSER TO STANDARD

INFCIRC/153 AGREEMENT WITHOUT, IN AGENCY'S VIEW, INTERFERING WITH SPECIAL CHARACTER AND PURPOSE OF U.S. VOLUNTARY OFFER. THEY POINTED OUT THAT ARTICLE 2 GRANTS AGENCY RIGHT TO APPLY SAFEGUARDS BUT OMITTS STANDARD REFERENCE TO OBLIGATION, THUS MAKING IT CLEAR THAT IT HAS NO OBLIGATION IN THIS CASE AND OBTAINS RIGHT ONLY BY AGREEMENT WITH U.S. PARAS B AND C OF ARTICLE 1 OF U.S. DRAFT ARE UNNECESSARY IN AGENCY VIEW, BECAUSE SAME PROVISIONS CONTAINED ELSEWHERE IN AGREEMENT, AND INFORTUNATE BECAUSE THEY APPEAR IMMEDIATELY TO CONTRADICT BROAD U.S. UNDERTAKING CONTAINED IN U.S. DRAFT OF 1-A BY LIMITING IT TO THOSE FACILITIES LISTED IN SUBSIDIARIES. AGENCY TEMA MADE CLEAR THEY NOT RPT NOT QUESTIONING U.S. BASIC APPROACH WHICH WOULD APPLY SAFEGUARDS ONLY TO NUCLEAR MATERIAL IN FACILITIES LISTED IN SUBSIDIARY ARRANGEMENTS; BUT THEIR SUGGESTIONS SOUGHT TO ACCOMPLISH THIS THROUGH LANGUAGE WHICH DEVIATES AS LITTLE AS POSSIBLE FROM "BLUE BOOK." AGENCY SEEMED PARTICULARLY BOTHERED BY U.S. DRAFT'S REFERENCE TO "MATERIAL IN ALL NUCLEAR ACTIVITIES," WHICH OF COURSE STEMS FROM WORDING OF PRESIDENTIAL OFFER; THEIR REDRAFT RESTORES STANDARD REFERENCE TO "MATERIAL IN ALL FACILITIES."

5. WE SAID WE WOULD FORWARD AGENCY COMMENTS AND SUGGESTIONS TO WASHINGTON FOR STUDY, AND WOULD NOT ATTEMPT RESPOND AT THIS TIME. WE DID POINT OUT THAT AGENCY REDRAFT OF ARTICLE 1 DID NOT APPEAR SOLVE ONE OF AGENCY'S PROBLEMS WHICH RECURS IN AGENCY'S COMMENTS ON U.S. DRAFT; NAMELY, THAT NUMBER OF SUCCEEDING PROVISIONS ARE SAID TO BE INCONSISTENT WITH PHRASE "UNDERTAKES TO ACCEPT SAFEGUARDS...ON ALL...MATERIAL." WE NOTED THAT SAME WORDS IN NPT AGREEMENTS MEANT THAT STATE AGREED TO HAVE SAFEGUARDS APPLIED TO ALL SUCH MATERIAL. IN U.S. AGREEMENT, WORDS WOULD MEAN THAT U.S. WILLING FOR AGENCY TO APPLY SAFEGUARDS TO ANY (OR ALL) MATERIAL WHICH AGENCY DESIGNATES FROM AMONG TOTAL. IT IS DIFFICULT JUSTIFY DIFFERENT MEANING IN U.S. AGREEMENT THAN IN NPT AGREEMENTS. WE SUGGESTED THAT SOME OTHER WORDING, SUCH AS

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"UNDERTAKES TO PERMIT THE INTERNATIONAL ATOMIC ENERGY AGENCY TO APPLY SAFEGUARDS", MIGHT MEET PROBLEM. AGENCY THOUGHT THAT WORTH CONSIDERING.

6. OTHER MAJOR AGENCY COMMENTS ON US DRAFT WERE AS FOLLOWS:

A. AGENCY OBJECTS TO USE OF TERM "INVENTORY CHANGE

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REPORT" IN ARTICLE 12(B), AS IT IS NOT OTHERWISE USED OR DEFINED UNTIL PART II OF AGREEMENT. AGENCY ALSO WOULD PREFER PUT THIRD SENTENCE OF ARTICLE 12(B), REGARDING TRANSFER OF MATERIAL TO AN ACTIVITY WITH NATIONAL SECURITY SIGNIFICANCE, IN ARTICLE 14, AND SPELL OUT IN GREATER DETAIL PROCEDURES TO BE FOLLOWED IN SUCH CASES, REQUIRING US TO IDENTIFY MATERIAL AND QUANTITY AND MAKING PROVISION FOR VERIFICATION OF THE MATERIAL TO BE WITHDRAWN. AGENCY DID NOT, HOWEVER, PROVIDE ANY RE-DRAFT OF THESE ARTICLES.

B. ARTICLE 19 OF US DRAFT, BY REFERRING ONLY TO LAST TWO SENTENCE OF ARTICLE XII.C OF STATUTE, ELIMINATES POSSIBILITY (ADMITTEDLY TOTALLY HYPOTHETICAL) OF BOARD OF GOVERNORS REPORTING NON-COMPLIANCE WITH AGREEMENT TO SECURITY COUNCIL AND GENERAL ASSEMBLY. AGENCY BELIEVES US WOULD BE BETTER ADVISED RETAIN SAME SANCTIONS AS IN NPT AGREEMENTS, EVEN THOUGH, AS US REP POINTED OUT, US NON-COMPLIANCE COULD NOT BE OF SAME DEGREE OF SIGNIFICANCE AS WOULD THAT BY NNWS.

C. RE ARTICLE 39-C, AGENCY ASKED WHAT "AVOID DISCRIMINATORY
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TREATMENT" MEANT AND HOW US FORESAW THAT THIS WOULD BE IMPLEMENTED. THEY ALSO ASKED WHETHER THIS PROVISION, LIKE OTHERS

DIFFERING FROM INFCIRC/153, COULD NOT BE BETTER PUT IN PROTOCOL RATHER THAN IN BODY OF AGREEMENT.

7. RE ARTICLES 91-97 ON INTERNATIONAL TRANSFERS, AGENCY GAVE US THREE-PAGE PAPER (ALSO POUCHED TAPE, BREWSTER, AMMONS) WHICH LISTS ALL POSSIBLE CASES OF TRANSFERS BETWEEN NWS AND NNWS, PARTIES AND NON-PARTIES TO NPT, AND CONSIDERS IN EACH CASE WHETHER ADVANCE NOTIFICATION OF TRANSFER IS USEFUL TO AGENCY. PAPER CONCLUDES NOTIFICATION IS USEFUL IN CASE OF TRANSFER FROM NWS TO NNWS/PARTY TO THE TREATY, BECAUSE AGENCY CAN BETTER PLAN AND EVALUATE RESULTS OF AGENCY'S VERIFICATION ACTIVITY IN RECIPIENT STATE; SAME IS TRUE IN TRANSFER TO NNWS/NOT PARTY, IF AGENCY HAS RIGHT TO VERIFICATION UNDER NON-NPT AGREEMENT WITH RECIPIENT. NOTIFICATION OF RECEIPT BY NWS ALSO USEFUL, EVEN THOUGH AGENCY HAS NO RIGHT TO VERIFY. US REP EXPLAINED AT LENGTH CURRENT US PROCEDURES ON INTERNATIONAL TRANSFERS, INCLUDING LACK OF ANY ADVANCE NOTIFICATION TO AEC. US CURRENTLY REPORTING TO IAEA ON EXPORTS EVERY SIX MONTHS. AGENCY SUGGESTED POSSIBILITY OF INFORMING IAEA OF EACH EXPORT OR IMPORT BY HAVING EXPORTER OR IMPORTER SEND COPY OF AEC FORM 741 DIRECTLY TO IAEA. WE SAID IT MIGHT BE MORE FEASIBLE FOR AEC TO SEND IAEA MORE FREQUENT COMPUTER PRINTOUTS SUMMARIZING ALL EXPORTS AND IMPORTS IN GIVEN PERIOD. AGENCY SAID ANY INCREASE IN FREQUENCY AND TIMELINESS OF INFORMATION WOULD BE MOST USEFUL. US REP SAID FEASIBILITY OF SUCH INCREASE WOULD BE CONSIDERED AS WELL AS FEASIBILITY OF ADVANCE NOTIFICATION, ALTHOUGH LATTER WOULD BE MORE DIFFICULT ACHIEVE. US REP ALSO RECALLED DISCUSSION WITH LOPEZ-MENCHERO IN WASHINGTON RE DESIRABILITY OF EACH NWS, PARTICULARLY THOSE PARTIES TO NPT, AGREEING TO PROVIDE INFO RE INTERNATIONAL TRANSFERS TO AGENCY AND THAT QUESTION OF HOW SUCH AGREEMENTS TO BE REFLECTED IN CONNECTION US AGREEMENT REMAINS OPEN.

8. RE STATE 145023, US REP ASKED IF AGENCY REALLY NEEDED DEVELOP FACILITY ATTACHMENTS ON ALL ELIGIBLE US FACILITIES, WHETHER INCLUDED IN SUBSIDIARY ARRANGEMENTS OR NOT. LOPEX REPLIED UNHESITATINGLY THAT AGENCY HAD CONCLUDED THIS INDISPENSABLE, IF AGENCY IS TO MAKE ANY USE OF RECORDS AND REPORTS RE ELIGIBLE FACILITIES; BROAD DATA BASE ON EXPERIENCE BY LARGE CONFIDENTIAL

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NUMBER US FACILITIES, EVEN IF UNVERIFIED BY AGENCY, CONSIDERED BY LOPEZ TO BE WELL WORTH EFFORT INVOLVED. DEVELOPMENT OF ALL ATTACHMENTS IS OF COURSE NECESSARY ELEMENT IN ALTERNATE APPROACH TO AGREEMENT WHICH LOPEZ HAS PROPOSED.

9. AGENCY TEAM SUGGESTED ALTERNATIVE BASIC FORMULATION FOR AGREEMENT (SEE PARA 4 REFTTEL) WHICH WOULD INVOLVE:

A. "STANDARD" AGREEMENT TEXT, BASED UPON INFCIRC/153, WITH

CHANGES IN ARTS 1 AND 2 AS PROPOSED IN AGENCY CRITIQUE OF
US DRAFT. (NOTE, HOWEVER, THAT NOT ALL AGENCY COMMENTS REPORTED
ABOVE RE US DRAFT WOULD BE APPLICABLE TO THIS APPROACH);

B. INCLUSION IN SUBSIDIARY ARRANGEMENTS OF FACILITY ATTACHMENT
FOR EACH ELIGIBLE (AS DETERMINED BY US) FACILITY; ACTUAL ROUTINE
INSPECTION EFFORT ESTIMATES WOULD BE INCLUDED IN EACH SUCH
FACILITY ATTACHMENT, ON BASIS THAT ART 90 WOULD APPLY TO THAT
FACILITY;

C. PROVISIONS IN PROTOCOL (IN ADDITION TO ANY OTHER PROVISIONS,
SUCH AS ARRANGEMENTS FOR COORDINATION OF NATIONAL SYSTEM WITH
AGENCY SYSTEM, UPON WHICH PARTIES HAVE AGREED) FOR (1) DIRGEN
TO INFORM US PERIODICALLY (E.G. ANNUALLY) THOSE ELIGIBLE
FACILITIES RE WHICH ART 90 WILL APPLY DURING SPECIFIED FUTURE
PERIOD AND (2) EXCLUDING FROM APPLICATION OF ART 28, ALL
ELIGIBLE FACILITIES OTHER THAN THOSE DESIGNATED FOR APPLI-
CATION ART 90, DURING SAME PERIOD;

D. IT WOULD BE UNDERSTOOD THAT DIR GEN WOULD CONSULT WITH US
AND OTHER INTERESTED GOVERNMENTS PRIOR EACH PERIOD DESIGNA-
TION AND AGENCY WOULD ROUTINELY INSPECT, DURING SPECIFIED PERIOD,
ONLY THOSE ELIGIBLE FACILITIES DESIGNATED BY DIR GEN FOR
APPLICATION ART 90.

10. LOPEZ-MENCHERO MENTIONED THAT IT HAD OCCURRED TO ...

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FM USMISSION IAEA VIENNA

TO SECSTATE WASHDC PRIORITY 3154

INFO AEC/GERMANTOWN PRIORITY

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C O N F I D E N T I A L SECTION 3 OF 3 IAEA VIENNA 6283

HIM THAT FOREGOING APPROACH MIGHT BE REVISED, IN INTEREST OF MAXIMUM FLEXIBILITY, BY OMITTING FROM ALL FACILITY ATTACHEMENTS ANY ESTIMATES OF ACTUAL ROUTINE INSPECTION EFFORT (ARIE) TO BE APPLIED. HE NOTED THAT CONCEPT OF INCLUSION SUCH ESTIMATES NOT RPT NOT REQUIRED BY INFCIRC/153 BUT RATHER WAS INVENTED BY SWEDEN DURING NEGOTIATION FACILITY ATTACHMENTS UNDER ITS NPT SAFEGUARDS AGREEMENT. OMISSION MIGHT ELIMINATE A POSSIBLE BONE OF CONTENTION BETWEEN US AND OTHER INDUSTRIALIZED COUNTRIES, WHO MIGHT QUIBBLE ABOUT LEVEL OF ARIES (DESPITE THEIR THEORETICAL CONFIDENTIALITY). HOWEVER, ARIES EXIST IN EVERY MAJOR NPT SAFEGUARDS AGREEMENT NEGOTIATED SO FAR, AND AGENCY CERTAINLY PREPARED DO THEM IN US CASE IF US WISHES.

1. DATE OF NEXT MEETING: AGENCY PROPOSED NEGOTIATORS MEET AGAIN SEPTEMBER 26, IN VIEW US BELIEF THAT IT WOULD BE DIFFICULT OBTAIN DEFINITIVE US RESPONSE TO AGENCY PROPOSALS IN TIME FOR AUGUST MEETING, AND ANY EARLIER IN SEPTEMBER WOULD CONFLICT WITH IAEA GENERAL CONFERENCE AND PREPARATIONS THEREFOR. US AGREED PROPOSE SEPTEMBER 26 DATE TO WASHINGTON.

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12. COMMENT: ALTHOUGH AGENCY'S CRITIQUE - WHICH APPARENTLY WAS ALMOST ENTIRELY THE WORK OF LEGAL DIVISION - REPEATEDLY RAISES QUESTION OF POSSIBLE CONFLICT BETWEEN US BASIC UNDERTAKING ("SAFE-GUARDS... ON ALL... MATERIAL") AND US PROPOSAL TO ALLOW AGENCY TO APPLY SAFEGUARDS ONLY ON MATERIAL IN CERTAIN SELECTED FACILITIES, AGENCY IS NO LONGER QUESTIONING LEGALITY OR WISDOM OF APPROACH, AND IN FACT NOW APPEARS TO APPRECIATE IMPORTANCE OF MAINTAINING SANCTITY OF SAFEGUARDS - I.E., THERE CAN BE NO SUCH THING AS SAFEGUARDS INSPECTIONS APPLIED RANDOMLY. AGENCY'S EFFORT NOW ENTIRELY FOCUSED ON OPTICAL APPEARANCE OF US DRAFT, IN ORDER TO MINIMIZE CRITICISM OF FINAL AGREEMENT BOTH WITHIN SECRETARIAT AND FROM MEMBER STATES. SECOND, AGENCY IS NOW MAKING SPECIFIC COUNTER-PROPOSALS IN CONCRETE TERMS, RATHER THAN SIMPLY DISCUSSING PHILOSOPHY. BOTH THESE DEVELOPMENTS ARE MAJOR STEPS FORWARDS, AND WE BELIEVE NEGOTIATIONS ARE NOW ON TRACK. WE WILL WANT TO STUDY AGENCY'S IDEAS CAREFULLY AND CONSIDER HOW AND TO WHAT DEGREE OUR RESPONSE CAN TAKE THEM INTO ACCOUNT.

13. AGENCY'S ALTERNATIVE APPROACH IS IMAGINATIVE, BUT MISSION IS TROUBLED BY CONCEPT THAT WHILE ALL MATERIAL IN ALL ELIGIBLE ACTIVITIES WOULD SEEMINGLY BE SAID TO BE "SUBJECT TO SAFEGUARDS" AGAINST DIVERSION, ETC., AGENCY WOULD FOREGO CERTAIN SPECIFIED

PROCEDURES (INSPECTION) WHICH TAKEN TOGETHER WITH OTHER PROCE-
DURES, CONSTITUTE "SAFEGUARDS". ESTABLISHMENT OF PRECEDENT FOR
SUCH INTERPRETATION IN NPT SAFEGUARDS AGREEMENTS MIGHT BE AVOIDED
IF PROTOCOL MAKES CLEAR THAT ARRANGEMENT FLOWS FROM UNIQUE CHAR-
ACTER AND DISTINCTIVE FEATURES OF US OFFER.LABOWITZ

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